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San Benito County Pesticide Regulatory Program 2007/2008 Performance Evaluation Report

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October 2008

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A Department of the California Environmental Protection Agency



Performance Evaluation of the San Benito County Agricultural Commissioner Pesticide Use Enforcement Program

This report provides an evaluation of San Benito County Agricultural Commissioner's (CAC's) pesticide use enforcement (PUE) program for fiscal year 2007/08. The assessment evaluates the performance of goals identified in the CAC's enforcement work plan as well as the program's adherence to Department of Pesticide Regulation (DPR) standards as described in the Pesticide Use Enforcement Program Standards Compendium.

I. Summary Report of Core Program Elements

Throughout the year, the following core areas of the San Benito's County pesticide enforcement program were evaluated: restricted materials permitting, compliance monitoring, and enforcement response. The report findings are based on field observations, oversight inspections, review of county records, and an evaluation of pesticide use and illness investigations for the fiscal year 2007/08.

A) Restricted Materials Permitting

The restricted materials permitting program meets DPR standards and work plan goals.

B) Compliance Monitoring

The compliance monitoring program meets DPR standards and work plan goals.

C) Enforcement Response

The enforcement response program meets DPR standards and work plan goals.

Summary Statement:

No deficiencies were identified in the San Benito County Agricultural Commissioner's pesticide use program and the program is currently effective.

II. Assessment of Core Program Effectiveness and Work Plan Goals

A) Restricted Materials Permitting

Permit Issuance

All San Benito County Agricultural Commissioner staff who issue restricted materials permits are experienced biologists and are knowledgeable of pesticide laws and regulations. All San Benito County pesticide use enforcement staff possesses certificates or licenses in Pesticide Regulation and Investigation and Environmental Monitoring.

All applicants requesting a restricted material permit contact the office and are transferred to an agricultural inspector/biologist who has the appropriate pesticide use license. Even though all pesticide enforcement staff are qualified to prepare and issue restricted materials permits, the most experienced biologists review the permits before they are issued to ensure they are correct and complete.

San Benito County conducts oral interviews with the person applying for a restricted materials permit to determine if they are the operators of the property. If they are not operators of the property, letters of authorization are required to be in possession of the applicant prior to the issuance of the permit. If the applicant possesses a private applicator certificate or a qualified applicator license, the county verifies and lists the numbers on the restricted materials permits.

San Benito County also uses the Restricted Materials Permit Program (RMPP) to issue permits. The program checks the permit being issued and will not allow a field to be left incomplete. Restricted materials permits are amended in person using DPR's supplemental form or by fax if the authorized representative signs and return the form to the San Benito CAC. When the permit is amended, the change is made on a supplemental page and is attached to the original permit, as well as entered into the RMPP program. Permit issuance training will be provided to staff by DPR prior to 2008/09 permit for new and seasoned inspectors.

Prior to approving the use of a restricted material on a permit, the San Benito CAC checks to see if the pesticide is registered for use on that crop using DPR's pesticide label database. The biologist issuing the restricted materials permit also reviews any permit condition that may apply to the pesticides on the permit and conditions it. Maps are used to identify sensitive sites that include labor camps, dairies, residential areas, roadways, and schools.

Approximately 167 restricted materials permits and 99 operator IDs were issued in 2007/08.

DPR's evaluation determined that permits are:

- Issued only to qualified applicants;
- Signed by authorized persons;
- Permit amendments follow approved procedures.

Site Evaluation

Notices of intent (NOIs) are received by fax machine, telephone (main office), and a drop box located in the main office. NOIs are reviewed by certified pesticide enforcement staff that check them against the permit in the computer. One biologist remains in the main office each day and is responsible to review the day's NOIs and issue permits. Biologists in the field have mobile radios and cell phones and are often contacted to check sites in sensitive areas when NOIs are submitted. Sensitive sites include parks, residential areas, schools, hospitals, and labor camps. The biologists have the authority to accept or deny NOIs and contact the operator of the property and the pest control business when the NOI is denied.

Notices of intent for the use of restricted materials to be applied near sensitive sites are evaluated and denied if the site is too close to residential areas. The application may be denied, conditioned or be made using non-restricted pesticides. When NOIs are denied, the property operator and pest control business are notified and a denial form is completed and filed in the restricted materials permit file.

Approximately 1,694 notices of intent are received annually.

The NOIs:

- Contained the necessary information;
- Identified treatment areas and sensitive areas that could be adversely impacted by the permitted uses; and
- Identified mitigation measures and included conditions that addressed known hazards.

The CAC staff adequately evaluated permits and determined if the use of feasible alternatives was required. The program reviews all NOIs in a timely manner and adequately monitors agricultural and non-agricultural permits utilizing pre-application site evaluations and use monitoring inspections.

B) Compliance Monitoring

Inspections

Staff from the San Benito County Agricultural Commissioner's office attended training sessions in 2007/08 that included restricted materials permit issuance, the structural regulatory program, the new respiratory regulations, and pesticide wildlife incident response.

Biologists conducting pesticide use inspections issue a violation notice for any criteria item marked "No" on the inspection forms. When worker safety non-compliances are found during an inspection, the biologists conduct a headquarters/employee safety inspection and any follow-up inspections required. The biologists also review the compliance history for the firm/person inspected and meets with the deputy before issuing a violation notice. The deputy and his staff prepare the case files and notice of proposed actions.

Inspections performed by the CAC were found to:

- Adequately address label, law and regulatory requirements;
- Include interviews of employers and employees;
- Adequately document violations; and
- Include appropriate follow-up inspections and procedures.

Investigations

All San Benito County Agricultural Commissioner staff conducts pesticide enforcement investigations. All incidents or complaints associated to pesticides are investigated and written reports are made on each case. Due to a higher number of investigations San Benito had this past year, training on investigative procedures and sampling will be provided to the staff by DPR during 2008/09.

C) Enforcement Response

When non-compliances are found during inspections and investigations, San Benito county pesticide enforcement staff issues violation notices and clerical staff data enters the information. The deputy reviews the compliance history of each respondent and utilizes the enforcement guidelines to determine if enforcement action is warranted. The biologists are required to conduct follow-up inspections, which include a headquarters employer/employee inspection when worker safety non-compliances are found. Enforcement actions are taken when violations are found on incidents involving drift, pesticide related illnesses. When enforcement actions are

not taken, a decision report is written listing the violations found, classification, a compliance history for the respondent, and an explanation of the CAC's decision not to take an enforcement action.

San Benito County issued seven agricultural civil penalties in 2007/08.

The CAC's enforcement program was found to:

- Initiate the appropriate action when violations are identified;
- Sufficiently support compliance, enforcement and public protection actions.

The CAC levied fines in the appropriate category, adheres to statutory time frames and follows DPR policies when imposing civil penalties.

III. Recommended Corrective Actions

No corrective actions are currently needed.

IV. Non-Core and Desirable Activities

The San Benito CAC provides outreach materials on compliance with pesticide laws and regulations and worker safety to restricted materials permittees.

San Benito CAC provides updates on laws and regulation at continuing education classes sponsored by the Farm Advisor and Weed Management.

San Benito received a Residual Mill Fee Project for 08/09. The project will fund one full time employee and a new vehicle for San Benito CAC to help with there pesticide enforcement and other programs.